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SUBJECT: DRC: WRESTLING WITH IMPUNITY AND CORRUPTION

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¶1. (SBU) Summary: In recent months, the Kabila administration has taken some steps that indicate increased sensitivity to outside perceptions of impunity and corruption in the DRC. These include the public adoption of a FARDC "zero tolerance" policy for human rights abuses, the use of FARDC military justice operational courts to prosecute soldiers in the field, and large scale dismissals within the corps of magistrates due to allegations of corruption. The actions do not represent a firm commitment to the rule of law and primacy of human rights and pose procedural questions themselves. However, they do seem to indicate a willingness by Kabila to take on issues that were once considered off limits. On the other hand, they may also represent a short term reaction to deflect growing criticism. Whichever the case, and despite Kabila's apparent new willingness to address difficult issues, the real effect of the actions will be undermined by government inaction or GDRC reactive criticism of international humanitarian organizations. End summary.

#### Criticism of the Government

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¶2. (SBU) International NGO criticism of the government regarding civilian protection increased in the wake of the two independent joint military operations with Uganda and Rwanda against foreign armed groups in early 2009. The LRA and the FDLR armed groups have killed and displaced thousands following and during military operations directed against them. Recent human rights organizations reports, including those of Human Rights Watch and Global Witness, have documented human rights abuses and sexual violence committed by the FARDC, the pervasiveness of impunity within security forces, and the complex link between natural resources and armed conflict in the eastern DRC (septel). During its May visit to the DRC, the UN Security Council presented the Kabila government with a list of five FARDC commanders who allegedly had committed rape and other human rights violations and asked Kabila to take action against them (Note: There has only been evidence of preliminary administrative actions against four of the five as of August 4. End note). The steady drum beat of pressure to address human rights issues has increased throughout 2009.

#### FARDC "Zero Tolerance"

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¶3. (SBU) Shortly after a meeting between Kabila and Human Rights Watch on July 2, FARDC Goma headquarters issued a press statement reminding all soldiers and commanders of their duty to protect the civilian population and noted "zero tolerance" for human rights abuses (Note: the press statement specifies the crimes of, inter alia, rape, forced labor, theft, extortion, torture, pillage and murder. End note). The notice warned commanders that they would be held accountable for actions committed by troops under their command. MONUC and other human rights organizations lauded the announcement as a positive step by the DRC in the fight against

FARDC indiscipline and impunity.

#### Military Justice

¶4. (SBU) The FARDC has used regional headquarters- and field-based operational military courts to try soldiers for crimes ranging from theft and embezzlement to rape and murder. Although the use of the operational courts pre-dates the July "zero tolerance" policy announcement, there have been several judgments since the announcement, including death sentences and life imprisonment for rape and murder. The FARDC Chief of Staff has reportedly participated directly in the recent procedures.

¶5. (SBU) In South Kivu, local media reported a FARDC judicial procedure on July 11, with Chief of Staff General Didier Etumba sitting in judgment, at Kimia II headquarters in Kavumu. The accused was a sergeant accused of raping a pregnant woman at Mwenga. The sergeant was sentenced to 15 years in prison and fines. A second rape case against a lieutenant accused of raping a 15 year old girl was also scheduled to be heard by a military court. No verdict has been reported yet in the second case.

¶6. (SBU) In July in North Kivu, ten soldiers were convicted and sentenced to punishments from ten years to life in prison by a Rutshuru military court for crimes of rape and manslaughter. The convicted included a lieutenant colonel and a major (who was convicted in absentia). Earlier in July, a military court had sentenced two soldiers, including a major, to death and life in prison for murdering a fellow soldier in Virunga National Park.

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#### Targeting Corruption

¶7. (SBU) Following sharp criticism of corruption within the corps of magistrates in his taped June 30 Independence day message to the nation, Kabila dismissed over 100 judges and magistrates and appointed over 700 new judicial personnel in July (reftel). The President of the Supreme Court and the Prosecutor General were included in the dismissals. Magistrates have claimed that they will challenge the presidential decrees authorizing the action on procedural grounds, appealing to the Supreme Court if necessary. The dismissals were issued through a judicial system "under construction" and the endorsement of the interim judicial disciplinary oversight body of the dismissals is in question. Local human rights NGO ASADHO ("Association Africaine de Defense des Droits de l'Homme" in French) called on Kabila on July 31 to postpone the dismissal action pending further review. The new Prosecutor General and President of the Supreme Court were sworn in by Kabila July 27.

¶8. (SBU) Following the July 15 decrees, Kabila sent letters to the Prime Minister and to the Presidents of the National Assembly and the Senate July 21 extolling them to promote national values and good governance, according to July 22 local press reports. In the letters, Kabila prompted the leaders to adopt a "zero-tolerance" policy for corruption, misappropriation of funds, influence peddling and misuse of public assets. He ordered them to punish members of government, national deputies, senators, and security service members who obstruct judicial decisions.

¶9. (SBU) Comment: Kabila has finally demonstrated a willingness to take action when confronted directly on human rights abuses, such as his statement of support regarding judicial actions against the five FARDC officers. However, the DRC has a mixed record on follow-up. The case of the five individuals mentioned by the Security Council has yet to be acted on decisively. More recently, and in the wake of the zero tolerance policy and military justice actions, the government spokesman publicly attacked the motives and actions of human rights organizations in a July 28 press conference (septel). While properly conducted prosecutions and convictions are laudable, it is not uncommon for convicted prisoners to "escape" or buy their way out of prison. Without a concomitant commitment to judicial and prison reform, the long-term results of military justice efforts are

in doubt. Kabila's actions demonstrate that he hears the message from domestic and international critics and is taking action. Whether or not he is truly committed to reform and is willing to ensure that his intentions are accurately dispatched throughout the bureaucratic chain and implemented, however, is another matter. End comment.

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